

(1) Proceeds or funds from public insurance or benefits or from private insurance are not treated as program income for purposes of 34 CFR 80.25.

(2) If the State receives reimbursements from Federal funds (*e.g.*, Medicaid reimbursements attributable directly to Federal funds) for services under part C of the Act, those funds are considered neither State nor local funds under § 303.225(b).

(3) If the State spends funds from private insurance for services under this part, those funds are considered neither State nor local funds under § 303.225.

(e) *Funds received from a parent or family member under a State's system of payments.* Funds received by the State from a parent or family member under the State's system of payments established under § 303.521 are considered program income under 34 CFR 80.25. These funds—

(1) Are not deducted from the total allowable costs charged under part C of the Act (as set forth in 34 CFR 80.25(g)(1));

(2) Must be used for the State's part C early intervention services program, consistent with 34 CFR 80.25(g)(2); and

(3) Are considered neither State nor local funds under § 303.225(b).

(Authority: 20 U.S.C. 1432(4)(B), 1435(a)(10), 1439(a))

§ 303.521 System of payments and fees.

(a) *General.* If a State elects to adopt a system of payments in § 303.500(b), the State's system of payments policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance), and include—

(1) The payment system and schedule of sliding or cost participation fees that may be charged to the parent for early intervention services under this part;

(2) The basis and amount of payments or fees;

(3) The State's definition of ability to pay (including its definition of income and family expenses, such as extraordinary medical expenses), its definition of inability to pay, and when and how

the State makes its determination of the ability or inability to pay;

(4) An assurance that—

(i) Fees will not be charged to parents for the services that a child is otherwise entitled to receive at no cost (including those services identified under paragraphs (a)(4)(ii), (b), and (c) of this section);

(ii) The inability of the parents of an infant or toddler with a disability to pay for services will not result in a delay or denial of services under this part to the child or the child's family such that, if the parent or family meets the State's definition of inability to pay, the infant or toddler with a disability must be provided all part C services at no cost.

(iii) Families will not be charged any more than the actual cost of the part C service (factoring in any amount received from other sources for payment for that service); and

(iv) Families with public insurance or benefits or private insurance will not be charged disproportionately more than families who do not have public insurance or benefits or private insurance;

(5) Provisions stating that the failure to provide the requisite income information and documentation may result in a charge of a fee on the fee schedule and specify the fee to be charged; and

(6) Provisions that permit, but do not require, the lead agency to use part C or other funds to pay for costs such as the premiums, deductibles, or co-payments.

(b) *Functions not subject to fees.* The following are required functions that must be carried out at public expense, and for which no fees may be charged to parents:

(1) Implementing the child find requirements in §§ 303.301 through 303.303.

(2) Evaluation and assessment, in accordance with § 303.320, and the functions related to evaluation and assessment in § 303.13(b).

(3) Service coordination services, as defined in §§ 303.13(b)(11) and 303.33.

(4) Administrative and coordinative activities related to—

(i) The development, review, and evaluation of IFSPs and interim IFSPs in accordance with §§ 303.342 through 303.345; and

§ 303.600

(ii) Implementation of the procedural safeguards in subpart E of this part and the other components of the statewide system of early intervention services in subpart D of this part and this subpart.

(c) *States with FAPE mandates, or that use funds under Part B of the Act to serve children under age three.* If a State has in effect a State law requiring the provision of FAPE for, or uses part B funds to serve, an infant or toddler with a disability under the age of three (or any subset of infants and toddlers with disabilities under the age of three), the State may not charge the parents of the infant or toddler with a disability for any services (*e.g.*, physical or occupational therapy) under this part that are part of FAPE for that infant or toddler and the child's family, and those FAPE services must meet the requirements of both parts B and C of the Act.

(d) *Family fees.* (1) Fees or costs collected from a parent or the child's family to pay for early intervention services under a State's system of payments are program income under 34 CFR 80.25. A State may add this program income to its part C grant funds, rather than deducting the program income from the amount of the State's part C grant. Any fees collected must be used for the purposes of the grant under part C of the Act.

(2) Fees collected under a system of payments are considered neither State nor local funds under § 303.225(b).

(e) *Procedural Safeguards.* (1) Each State system of payments must include written policies to inform parents that a parent who wishes to contest the imposition of a fee, or the State's determination of the parent's ability to pay, may do one of the following:

(i) Participate in mediation in accordance with § 303.431.

(ii) Request a due process hearing under § 303.436 or 303.441, whichever is applicable.

(iii) File a State complaint under § 303.434.

(iv) Use any other procedure established by the State for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights under this part, including the right to pursue, in a

34 CFR Ch. III (7–1–13 Edition)

timely manner, the redress options described in paragraphs (e)(2)(i) through (e)(2)(iii) of this section.

(2) A State must inform parents of these procedural safeguard options by either—

(i) Providing parents with a copy of the State's system of payments policies when obtaining consent for provision of early intervention services under § 303.420(a)(3); or

(ii) Including this information with the notice provided to parents under § 303.421.

(Authority: 20 U.S.C. 1432(4)(B), 1439(a), 1440)

Subpart G—State Interagency Coordinating Council

§ 303.600 Establishment of Council.

(a) A State that desires to receive financial assistance under part C of the Act must establish a State Interagency Coordinating Council (Council) as defined in § 303.8.

(b) The Council must be appointed by the Governor. The Governor must ensure that the membership of the Council reasonably represents the population of the State.

(c) The Governor must designate a member of the Council to serve as the chairperson of the Council or require the Council to do so. Any member of the Council who is a representative of the lead agency designated under § 303.201 may not serve as the chairperson of the Council.

(Authority: 20 U.S.C. 1441(a))

§ 303.601 Composition.

(a) The Council must be composed as follows:

(1)(i) At least 20 percent of the members must be parents, including minority parents, of infants or toddlers with disabilities or children with disabilities aged 12 years or younger, with knowledge of, or experience with, programs for infants and toddlers with disabilities.

(ii) At least one parent member must be a parent of an infant or toddler with a disability or a child with a disability aged six years or younger.

(2) At least 20 percent of the members must be public or private providers of early intervention services.